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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: Michael Bundy

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Group No.: 3624

**JUN 02 2004**

Serial No.: 09/574,595

Filed: May 19, 2000

Examiner:  
Narayanswamy Subramanian

For: Latency Monitor

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
(REVOCATION OF PRIOR POWERS)**

Attorney Docket: 1991-01400

Date: May 25, 2004

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

As assignee of record of the entire interest of the above identified application, all powers of attorney previously given are hereby revoked and the following attorney(s) are hereby appointed to prosecute and transact all business in the Patent and Trademark Office connected therewith:

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Michael F. Heim	32,702	David A. Rose	26,223
Robert Gray	41,798	Marcella D. Watkins	36,962
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Gregory L. Maag	32,363	Shannon W. Bates	47,412
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**ASSIGNEE CERTIFICATION**

Attached to this Power is a "CERTIFICATE UNDER 37 CFR 3.73(b)".

Date: 5-25-2004

By: 

Typed Name: Diane Turriff

Title: Senior Counsel  
E\*Trade Financial Corporation

PTO/SB/96(04-03)

Approved for use through 04/30/2003. OMB 0651-0031

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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**CERTIFICATE UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: **E\*TRADE FINANCIAL CORPORATION**Application No./Patent No.: 09/574,595Filed/Issue Date: May 19, 2000Entitled: **Latency Monitor****E\*Trade Financial Corporation**

(Name of Assignee)

**a corporation**

Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of an undivided part interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %

In the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United Patent and Trademark Office at Reel, Frame, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Michael Bundy To: Tradescape Technologies, L.L.C.  
The document was recorded in the United Patent and Trademark Office at  
Reel 010820, Frame 0196
2. From: Tradescape Technologies, L.L. C. To: Tradescape Technologies, L.L.C.  
The document was recorded in the United Patent and Trademark Office at  
Reel 011941, Frame 0649
3. From: Tradescape Technologies, L.L.C. To: E\*Trade Financial Corporation  
for which a copy thereof is attached.

- ☐ Additional documents in the chain of title are listed on a supplemental sheet.
- ☐ Copies of assignments or other documents in the chain of title are attached.  
[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

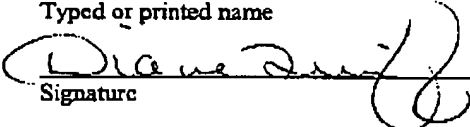
The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

5-25-2004

Date

Diane Turriff

Typed or printed name

**E\*Trade Financial Corporation**  
SignatureSenior Counsel

Title

125985.01/1991.01400

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR

## MERGER AGREEMENT

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of April 10, 2002, is being entered into by and among Tradescape Corp., a Delaware corporation (the "Company"), Tradescape Technology Holdings Inc., a Delaware corporation and a wholly owned subsidiary of the Company ("TTH"), Tradescape Momentum Holdings Inc., a Delaware corporation and a wholly owned subsidiary of the Company ("MHI" and, together with TTH, the "Target Companies," and each a "Target Company"), E\*TRADE Group, Inc., a Delaware corporation ("Parent"), TTH Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Parent ("TTH Merger Sub") and MHI Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Parent ("MHI Merger Sub" and, together with TTH Merger Sub, the "Merger Subs"). Capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them in Section 12.1 of this Agreement.

## RECITALS

A. The Company is a holding company which, through the Target Companies, provides end-to-end electronic trading solutions for retail, professional and institutional traders through its family of direct and indirect Subsidiaries including: Momentum Securities, LLC ("Momentum"), a Subsidiary of MHI, which is a provider of onsite brokerage services for professional traders engaged in high-frequency securities trading, largely for their own accounts; Tradescape Securities, LLC ("TSLLC"), also a subsidiary of MHI, which provides active retail customers the same high-speed direct access trading technologies used by institutional and professional traders, as well as competitive commissions, free Level II quotes and superior customer service; Tradescape Technologies, LLC ("TTLIC"), a subsidiary of TTH which distributes products, including Smart Order Routing Technology<sup>SM</sup> (SORT<sup>SM</sup>), Electronic Communications Portal<sup>SM</sup> (ECP<sup>SM</sup>) technology, which provides access to all major liquidity pools through high-speed market connections, and LightSpeed<sup>SM</sup>, a next-generation trading platform for professional traders, domestically and internationally through licensing agreements with the other Company Subsidiaries and through third-party arrangements; and Momentum Securities Partners, LLC ("MSP LLC"), a subsidiary of MHI which serves primarily as an asset holding company for Momentum.

B. On the date of this Agreement and at the Effective Time, respectively, the Company owns and will own, respectively, 100% of the issued and outstanding shares of capital stock of the Target Companies.

C. As a result of the mergers contemplated by this Agreement, pursuant to the terms and on the conditions contained in this Agreement, each Merger Sub will be merged with and into the Target Company specified in this Agreement, resulting in Parent acquiring 100% of the issued and outstanding shares of capital stock of each Target Company.

D. The respective Boards of Directors of each of Parent, the Merger Subs, the Company and the Target Companies have determined that the mergers of the Merger Subs with and into the Target Company specified in this Agreement (hereinafter referred to as the "Mergers") in accordance with the laws of the State of Delaware, and subject to the terms and conditions of this Agreement, are advisable and in the best interests of Parent, each Merger Sub, the Company and each Target Company, as the case may be, and their respective stockholders and have, where appropriate or required, approved this Agreement and the Mergers.

## 2.11. Intellectual Property.

(a) Schedule 2.11(a) of the Company Disclosure Schedule sets forth a list of all Intellectual Property owned by either Target Company or any of their respective Subsidiaries (other than trade secrets, know-how and goodwill attendant to the Intellectual Property and other intellectual property rights not reducible to schedule form). The Target Companies and/or their respective Subsidiaries have all right, title and interest in all such Intellectual Property, free and clear of all claims and/or rights of other Persons, and all such Intellectual Property is valid and in good standing.

(b) Schedule 2.11(b) of the Company Disclosure Schedule sets forth a list of all Intellectual Property licensed from third parties by either Target Company or any of their respective Subsidiaries. The Target Companies and/or their respective Subsidiaries have a valid and binding license to use all such Intellectual Property, free and clear of all claims and/or rights of other Persons, and all such Intellectual Property is valid and in good standing.

(c) Except for the Intellectual Property listed on Schedule 2.11(a) and Schedule 2.12(b) of the Company Disclosure Schedule, and trade secrets, know-how and goodwill attendant to such Intellectual Property and other intellectual property rights not reducible to schedule form, no other Intellectual Property is used or is proposed to be used by either Target Company or any of their respective Subsidiaries in their respective businesses as currently conducted or as currently proposed to be conducted nor is any other Intellectual Property necessary for the conduct of such business.

(d) Each Target Company and its respective Subsidiaries have taken all reasonable precautions to protect the secrecy, confidentiality and value of all know-how included in the Intellectual Property.

(e) Neither of the Target Companies nor any of their respective Subsidiaries have (i) licensed any of their Intellectual Property in source code form to any party; (ii) entered into any exclusive agreements relating to their Intellectual Property; or (iii) entered into any arrangements or agreements that could cause an encumbrance or impairment of their Intellectual Property rights.

Schedule 2.11(a)List of Intellectual property

Unless otherwise noted on this Schedule 2.11(a), all intellectual property is owned by Tradescape Technologies, LLC.

PATENTS APPLICATIONS

Serial No.  
Filing Date

Title

Street Name

09/574,595    Latency Monitor  
05/19/00

Latency Monitor